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**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

ALEX GRABOWSKI; an individual, on
behalf of himself, and on behalf of all
persons similarly situated,

Plaintiff,

vs.

C.H. ROBINSON COMPANY, INC.,

Defendant.

CASE No. **10-cv-1658 - WQH - BGS**

**AMENDED CLASS AND
COLLECTIVE ACTION COMPLAINT
FOR:**

1. UNFAIR COMPETITION IN VIOLATION OF CAL. BUS. & PROF. CODE §§ 17200 et. seq.;
2. FAILURE TO PAY OVERTIME COMPENSATION IN VIOLATION OF CAL. LAB. CODE §§ 510, 515.5, 551, 552, 1194 AND 1198, et. seq.;
3. FAILURE TO PROVIDE ACCURATE ITEMIZED STATEMENTS IN VIOLATION OF CAL. LAB. CODE § 226; and,
4. FAILURE TO PAY OVERTIME COMPENSATION IN VIOLATION OF 29 U.S.C. §§ 201 et. seq.

DEMAND FOR A JURY TRIAL

Action Filed: August 9, 2010

1 Plaintiff Alex Grabowski, on behalf of himself and all other similarly situated current and
2 former employees, alleges on information and belief, except for his own acts and knowledge
3 which are alleged based on personal knowledge, the following:

4
5 **NATURE OF THE ACTION**

6 1. Pursuant to Rule 23 of the Federal Rules of Civil Procedure, Plaintiff Grabowski
7 (the "PLAINTIFF") brings this Action against Defendant C.H. Robinson Company, Inc.
8 ("DEFENDANT" or "CHRW") on his own behalf and on behalf of a class consisting of all
9 Transportation Employees employed by CHRW in California during the period commencing
10 on the date four (4) years before the filing of this Complaint and ending on the date as
11 determined by the Court (the "CALIFORNIA CLASS"). During their employment with
12 DEFENDANT, PLAINTIFF and the other Transportation Employees primarily performed non-
13 exempt job duties on the production side of CHRW's enterprise. Although the PLAINTIFF and
14 the other Transportation Employees worked more than eight (8) hours a workday, forty (40)
15 hours a workweek, and/or on seven (7) consecutive days primarily performing non-exempt job
16 duties for DEFENDANT, CHRW classified them as "exempt" from overtime pay and thereby
17 failed to pay them overtime compensation. CHRW's uniform policy and practice alleged herein,
18 namely with respect to classifying Transportation Employees as "exempt" from overtime based
19 on job title alone, is a deceptive, an unfair and an unlawful practice whereby CHRW retained
20 and continues to retain wages due to the PLAINTIFF and to the other Transportation
21 Employees. The PLAINTIFF and the other Transportation Employees seek an injunction
22 enjoining such conduct by CHRW in the future, relief for the named PLAINTIFF and all the
23 other Transportation Employees who have been economically injured by CHRW's past and
24 current unlawful conduct, and all other appropriate equitable relief.

25
26 **THE PARTIES**

27 2. Defendant C.H. Robinson Company, Inc. is incorporated under the laws of
28 Minnesota and maintains its principal place of business in Eden Prairie, Minnesota. CHRW

1 also operates in California using the name C. H. Robinson Transportation Company, Inc. and
2 C.H. Robinson Worldwide, Inc. CHRW has become a Fortune 500 company that provides
3 multimodal transportation services and logistics solutions in California and throughout the
4 United States. Originally, Charles Robinson incorporated CHRW in 1905 as a produce and
5 general merchandise brokerage firm. After several years, CHRW expanded with the focus of
6 transporting and distributing perishable products by horse and buggy before the products spoil.
7 CHRW entered the regulated trucking business by 1968 and by 1979, CHRW bought its first
8 IBM mainframe, which began an era of centrally supported technology, electronics
9 communications and information sharing. The passage of the Motor Carrier Act of 1980
10 deregulated transportation, paving the way for CHRW to act as a freight brokerage for any type
11 of product. In 1986, CHRW became a completely non-asset based logistics provider, eventually
12 going public on October 16, 1997 and becoming a Fortune 500 company traded in the
13 NASDAQ exchange under the symbol "CHRW."

14 3. CHRW does not own the transportation equipment that it uses to transport freight;
15 instead, CHRW essentially acts as a matchmaker, setting up established clients that need to
16 move products and goods with one of the 47,000 or more transportation companies CHRW
17 regularly uses. To complete the day to day tasks of matching established clients with
18 transportation companies, CHRW employs individuals with the titles of "Account Managers,"
19 "Transportation Representatives," "Transportation Sales Representatives," "Transportation
20 Coordinators," "Operations Coordinators," "Support Representatives," "Air Logistics
21 Representatives," and "Customer Service/Data Entry" (these individuals are collectively referred
22 to herein as the "Transportation Employees"). Although these various titles may create the
23 superficial appearance of a number of unique jobs, in fact, the work performed by all
24 Transportation Personnel are substantially similar and they all perform the same primary job
25 duty, such that individuals given these titles are properly grouped together for the purpose of
26 determining that they were all misclassified. Throughout the CLASS PERIOD, the PLAINTIFF
27 and the other Transportation Employees primarily performed job duties relating to the
28 production side of CHRW's enterprise, which consisted of (i) taking customer orders, (ii)

1 locating shipping companies (iii) providing rate quotes, (iv) coordinating freight pick up and
2 delivery (v) monitoring shipments, (vi) collecting accounts receivable, and (vii) entering data
3 into CHRW's computer system. The PLAINTIFF and the other Transportation Employees do
4 not exercise independent discretion and judgment in performing these job duties or as to matters
5 of significance. Primarily, these employees only work with the customer base and
6 transportation base that CHRW has already established. The PLAINTIFF and the other
7 Transportation Employees apply rates with pre-established customers and transportation
8 companies under strict guidelines and do not have the authority to bind DEFENDANT to
9 contracts without following those guidelines unless management approves of the deviation.
10 DEFENDANT has established specific procedures and protocols for standardized entry of
11 information and standardized scripts for gathering information. These centralized rules mirror
12 the realities of the workplace evidencing a uniformity of work among the Transportation
13 Employees and negate any exercise of independent judgment and discretion.

14 4. The PLAINTIFF, at all relevant times mentioned herein, resided in San Diego,
15 California. The PLAINTIFF was employed by CHRW as an "Account Manager" from October
16 1, 2007 to February 5, 2010 at DEFENDANT's branch located in San Diego, California.
17 Although the PLAINTIFF regularly worked more than eight (8) hours a workday, forty (40)
18 hours a workweek, and/or on seven (7) consecutive days, CHRW classified him as "exempt"
19 from overtime and thereby failed to pay him overtime compensation for the overtime hours he
20 worked.

21 5. The PLAINTIFF brings this Action against DEFENDANT under Rule 23 of the
22 Federal Rules of Civil Procedure on his own behalf and on behalf of a class consisting of all
23 Transportation Employees employed by CHRW in California (the "CALIFORNIA CLASS")
24 during the period beginning on the date four (4) years before the filing of this complaint and
25 ending on the date as determined by the Court (the "CALIFORNIA CLASS PERIOD"). During
26 the CALIFORNIA CLASS PERIOD, the work schedule for Transportation Employees was set
27 by DEFENDANT. The PLAINTIFF and the members of the CALIFORNIA CLASS typically
28 worked hours in excess of eight (8) hours in a workday, forty (40) in a workweek, and/or on

1 seven (7) consecutive days, primarily performing job duties as described above on the
2 production side of DEFENDANT's business which do not give rise to an exemption under
3 California or Federal Law, though the schedule and amount of overtime worked varied based
4 upon the needs of DEFENDANT, the instructions of DEFENDANT's management, and the
5 productivity requirements for the Transportation Employees. Although the PLAINTIFF and
6 the members of the CALIFORNIA CLASS worked overtime, as a matter of uniform company
7 policy, practice, and procedure, DEFENDANT has unlawfully, unfairly and/or deceptively
8 classified every member of the CALIFORNIA CLASS as "exempt" based on job title alone.
9 The PLAINTIFF and the other Transportation Employees were not provided with overtime
10 compensation and other benefits required by law as a result of being classified as "exempt" by
11 DEFENDANT.

12 6. DEFENDANT has intentionally and deliberately created numerous job levels and
13
14 a multitude of job titles to create the superficial appearance of a number of unique jobs, when
15 in fact, these jobs are substantially similar and can be easily grouped together for the purpose
16 of determining whether they are entitled to the relief sought here. The claims of all
17 Transportation Employees as set forth herein can be adjudicated together as a group because
18 DEFENDANT's systematic and uniform policies and practices applied to each and every one
19 of these Transportation Employees.

20 7. DEFENDANT maintains records from which the Court can ascertain and identify
21 each of DEFENDANT's employees who is a member of the CALIFORNIA CLASS, has been
22 systematically, intentionally and uniformly subjected to the policies and practices challenged
23 herein as a matter of CHRW's corporate policy, practice and procedure. To the extent CHRW
24 has assigned job titles, other than those identified herein, to employees subjected to the practices
25 herein alleged, the PLAINTIFF will seek leave to amend the Complaint to include any
26 additional job titles when such titles are identified.

27
28 **THE CONDUCT**

The Unlawful, Unfair And/or Deceptive Failure to Have in Place a Company-wide Policy, Practice and Procedure to Correctly Determine Whether the PLAINTIFF and the other Members of the CALIFORNIA CLASS Were Properly Classified as Exempt and Failing to Pay Overtime Wages for Overtime Hours Worked

8. Throughout the CALIFORNIA CLASS PERIOD, the PLAINTIFF and the other Transportation Employees primarily performed job duties relating to the production side of CHRW's enterprise. These job duties included (i) taking customer orders, (ii) locating shipping companies (iii) providing rate quotes, (iv) coordinating freight pick up and delivery, (v) monitoring shipments, (vi) collecting accounts receivable, and (vii) entering data into CHRW's computer system. The primary duties required of the Transportation Employees are executed through the performance of non-exempt labor within a defined skill set using CHRW's standardized training and procedures.

9. Although the PLAINTIFF and the Transportation Employees primarily performed the non-exempt labor as set forth by the DEFENDANT in the company's comprehensive and uniform corporate policies and procedures, DEFENDANT instituted a blanket classification policy, practice and/or procedure by which all the Transportation Employees without exception were classified as exempt from overtime compensation. By reason of this unlawful, uniform and deceptive systematic exemption practice, policy and procedure, DEFENDANT committed and continues to commit acts of unfair competition in violation of the California Unfair Competition Law, Cal. Bus. & Prof. Code § 17200 (the "UCL"), by engaging in a company-wide policy, practice and procedure which failed to properly classify the PLAINTIFF and the other Transportation Employees and failed to pay them overtime wages for overtime hours worked. The proper classification of these employees is the DEFENDANT's burden. As a result of DEFENDANT's intentional disregard of the obligation to meet this burden, DEFENDANT failed to pay all legally required overtime compensation for work performed by the members of the CALIFORNIA CLASS in violation of the Fair Labor Standards Act, the California Labor Code, and there regulations promulgated thereunder as herein alleged.

10. DEFENDANT, as a matter of law, has the burden of proving that (a) employees are properly classified as exempt and that (b) DEFENDANT otherwise complies with

1 applicable laws. Other than the initial classification of the PLAINTIFF and other
2 Transportation Employees as exempt from being paid overtime based on job title alone,
3 DEFENDANT had no business policy, practice, or procedure to ensure that the PLAINTIFF
4 and other Transportation Employees were properly classified as exempt, and in fact, as a matter
5 of corporate policy erroneously classified the PLAINTIFF as well as the other Transportation
6 Employees as exempt.

7 11. During their employment with DEFENDANT, PLAINTIFF and the other
8 Transportation Employees on the production side of DEFENDANT's enterprise, performed
9 non-exempt duties but were nevertheless classified by DEFENDANT as exempt from overtime
10 pay and worked more than eight (8) hours a day, forty (40) hours a week, and/or on the seventh
11 (7th) of a workweek.

12 12. The PLAINTIFF and the other Transportation Employees employed by
13 DEFENDANT were not primarily engaged in work of a type that was or now is directly related
14 to management policies or general business operations. The PLAINTIFF and the other
15 Transportation Employees employed by DEFENDANT were also not primarily engaged in
16 work of a type that was or now is performed at the level of the policy or management of the
17 DEFENDANT. To the contrary, the work of a Transportation Employee was work wherein the
18 PLAINTIFF and the other members of the CALIFORNIA CLASS were primarily engaged in
19 the day to day business operations of the DEFENDANT to execute transactions between pre-
20 established customers and transportation companies, monitor the transportation of the products
21 and goods, and enter information in a computer database in accordance with the training
22 policies and general operation requirements established by DEFENDANT.

23 13. The fact that the work of these employees may have involved work using a
24 computer and/or a specialized skill set in a defined technical area does not mean that the
25 PLAINTIFF or other Transportation Employees employed by DEFENDANT are exempt from
26 overtime wages. Indeed, the exercise of discretion and independent judgment must be more
27 than the use of a highly technical skill set described in a manual or other sources. The
28 PLAINTIFF and the other Transportation Employees were and are primarily engaged in running

1 the day to day activities of DEFENDANT's enterprise. As a result, the PLAINTIFF and the
2 other Transportation Employees employed by DEFENDANT were primarily engaged in work
3 that falls on the production side of the administrative/production worker dichotomy and should
4 have been properly classified as non-exempt employees. Further, although the work of
5 Transportation Employees involves a computer database, the work of Transportation Employees
6 in no way involves computer programming or writing code for the database.

7 14. The PLAINTIFF and all members of the CALIFORNIA CLASS are and were
8 uniformly classified and treated by DEFENDANT as exempt at the time of hire and thereafter,
9 DEFENDANT failed to take the proper steps to determine whether the PLAINTIFF, and the
10 other members of the CALIFORNIA CLASS, were properly classified under Industrial Welfare
11 Commission Wage Order 4-2001 and Cal. Lab. Code §§ 510 et seq. and Section 13 of the Fair
12 Labor Standards Act (the "FLSA") as exempt from applicable federal and state labor laws.
13 Since DEFENDANT affirmatively and willfully misclassified the PLAINTIFF and the members
14 of the CALIFORNIA CLASS under both the FLSA or the California Labor Laws,
15 DEFENDANT's practices violated and continue to violate the law. In addition, the
16 DEFENDANT acted deceptively by falsely and fraudulently telling the PLAINTIFF and each
17 member of the CALIFORNIA CLASS that they were exempt from overtime pay when
18 DEFENDANT knew or should have known that this statement was false and not based on
19 known facts. The DEFENDANT also acted unfairly by violating the labor laws of the United
20 States and California. As a result of this policy and practice, DEFENDANT violated the UCL.

21
22 The Unfair, Unlawful and/or Deceptive Failure to Provide Accurate Wage Statements

23 15. DEFENDANT failed to provide and still fails to provide The PLAINTIFF and
24 other Transportation Employees with a wage statement in writing which accurately sets forth
25 gross wages earned, all applicable hourly rates in effect during the pay period and the
26 corresponding number of hours worked at each hourly rate by the PLAINTIFF and other
27 Transportation Employees. This conduct violates California Labor Code § 226. The wage
28 statement also does not display anywhere The PLAINTIFF's and other Transportation

1 Employees' overtime hours and applicable rates of overtime pay for the pay period.

2 16. By reason of this uniform conduct applicable to the PLAINTIFF and to all the
 3 CALIFORNIA CLASS members, DEFENDANT committed acts of unfair competition in
 4 violation of the California Unfair Competition Law, Cal. Bus. & Prof. Code § 17200 (the
 5 "UCL"), by engaging in a company-wide policy and procedure which failed to correctly classify
 6 the PLAINTIFF and the CALIFORNIA CLASS of Transportation Employees as non-exempt.
 7 The proper classification of these employees is the DEFENDANT's burden. As a result of
 8 DEFENDANT's intentional disregard of the obligation to meet this burden, DEFENDANT
 9 failed to properly calculate and/or pay all required overtime compensation for work performed
 10 by the members of the CALIFORNIA CLASS and violated the Fair Labor Standards Act and
 11 the California Labor Code and regulations promulgated thereunder as herein alleged.

12 THE UCL REMEDIES

13
 14 17. As a result of DEFENDANT's UCL violations, the PLAINTIFF, on behalf of
 15 himself and the CALIFORNIA CLASS, seeks restitutionary disgorgement of DEFENDANT's
 16 ill-gotten gains into a fluid fund in order to provide restitution of all the money that
 17 DEFENDANT were required by law to pay, but failed to pay, to the PLAINTIFF and all other
 18 CALIFORNIA CLASS members. The PLAINTIFF also seeks all other relief available to him
 19 and the other Transportation Employees under California law. The PLAINTIFF also seek
 20 declaratory relief finding that the employment practices and policies of the DEFENDANT
 21 violate California law, and equitable relief, including an injunction, as is necessary to prevent
 22 the DEFENDANT's continued violation of California law.

23 THE CALIFORNIA CLASS

24 18. PLAINTIFF brings the First Cause of Action for Unfair, Unlawful and Deceptive
 25 Business Practices pursuant to Cal. Bus. & Prof. Code §§ 17200, et seq. (the "UCL") as a class
 26 action, pursuant to Fed. R. Civ. Proc. 23(b)(2) and/or (3) on behalf of a class defined as all
 27 individuals who are or previously were employed by DEFENDANT as a Transportation
 28 Employee in California (the "CALIFORNIA CLASS") during the period beginning on the date

1 four years before the filing of this complaint and ending on the date as determined by the Court
2 (the “CALIFORNIA CLASS PERIOD”).

3 19. To the extent equitable tolling operates to toll claims by the CALIFORNIA
4 CLASS against DEFENDANT, the CALIFORNIA CLASS PERIOD should be adjusted
5 accordingly.

6 20. DEFENDANT, as a matter of corporate policy, practice and procedure, and in
7 violation of the applicable Labor Code, Industrial Welfare Commission (“IWC”) Wage Order
8 Requirements, and the applicable provisions of California law, intentionally, knowingly, and
9 wilfully, engaged in a practice whereby DEFENDANT unfairly, unlawfully, and deceptively
10 instituted a practice to ensure that Transportation Employees were not properly classified as
11 non-exempt from the requirements of California Labor Code §§ 510, et. seq.

12 21. DEFENDANT has the burden of proof that each and every employee is properly
13 classified as exempt from the requirements of the Cal. Lab. Code §§ 510, et. seq. The
14 DEFENDANT, however, as a matter of uniform and systematic policy and procedure had in
15 place during the CALIFORNIA CLASS PERIOD and still has in place a policy and practice
16 that systematically misclassifies the members of the CALIFORNIA CLASS as exempt. The
17 DEFENDANT’s uniform policy and practice in place at all times during the CALIFORNIA
18 CLASS PERIOD and currently in place is to systematically classify each and every
19 CALIFORNIA CLASS member as exempt from the requirements of the California Labor Code
20 §§ 510, et seq. This common business practice applicable to each and every CALIFORNIA
21 CLASS member can be adjudicated on a classwide basis as unlawful, unfair, and/or deceptive
22 under Cal. Bus. & Prof. Code §§ 17200, et seq., as causation, damages, and reliance are not
23 elements of this claim.

24 22. At no time before, during or after the PLAINTIFF’s employment with
25 DEFENDANT was any Transportation Employee reclassified as non-exempt from the
26 applicable requirements of California Labor Code §§ 510, et seq. after each CALIFORNIA
27 CLASS member was initially, uniformly, and systematically classified as exempt upon being
28 hired.

23. Any individual declarations of any employees offered at this time purporting to indicate that one or more Transportation Employees may have been properly classified is of no force or affect absent contemporaneous evidence that DEFENDANT's uniform system did not misclassify the PLAINTIFF and other Transportation Employees as exempt pursuant to Cal. Lab. Code §§ 510, et seq. Absent proof of such a contemporaneous system, DEFENDANT's business practice is uniformly unlawful, unfair and/or deceptive under the UCL and may be so adjudicated on a classwide basis. As a result of the UCL violations, the PLAINTIFF and the CALIFORNIA CLASS Members are entitled to compel DEFENDANT to provide restitutionary disgorgement of its ill-gotten gains into a fluid fund in order to restitute these funds to the PLAINTIFF and the members of the CALIFORNIA CLASS according to proof.

24. The CALIFORNIA CLASS, numbering more than 100 members, is so numerous that joinder of all Transportation Employees, is impracticable, and throughout the CALIFORNIA CLASS PERIOD, DEFENDANT uniformly violated the rights of the CALIFORNIA CLASS under California law by:

- (a) Violating the California Unfair Competition Laws, Cal. Bus. & Prof. Code §§ 17200, et seq. by unlawfully, unfairly and/or deceptively having in place company policies, practices and procedures that uniformly misclassified the PLAINTIFF and the members of the CALIFORNIA CLASS as exempt;
- (b) Committing an act of unfair competition in violation of the UCL, by unlawfully, unfairly, and/or deceptively failing to have in place a company policy, practice and procedure that accurately determined the amount of working time spent by the PLAINTIFF and the members of the CALIFORNIA CLASS performing non-exempt labor;
- (c) Committing an act of unfair competition in violation of the UCL, by having in place a company policy, practice and procedure that failed to reclassify as non-exempt those members of the CALIFORNIA CLASS

whose actual job duties are primarily non-exempt;

- (d) Committing an act of unfair competition in violation of the UCL by violating Cal. Lab. Code §§ 510, et seq. by failing to pay the correct overtime pay to the PLAINTIFF and the members of the CALIFORNIA CLASS who were improperly classified as exempt; and,
- (e) Committing an act of unfair competition in violation of the UCL by violating Cal. Lab. Code § 226 by failing to provide the PLAINTIFF and the members of the CALIFORNIA CLASS with an accurate itemized statement in writing showing the gross wages earned, the net wages earned, all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee.

25. This Class Action meets the statutory prerequisites for the maintenance of a Class Action as set forth in Fed. R. Civ. Proc. 23(b)(2) and/or (3), in that:

- (a) The persons who comprise the CALIFORNIA CLASS exceed 100 persons and are therefore so numerous that the joinder of all such persons is impracticable and the disposition of their claims as a class will benefit the parties and the Court;
- (b) Nearly all factual, legal, statutory, and declaratory relief issues that are raised in this Complaint are common to the CALIFORNIA CLASS will apply uniformly to every member of the CALIFORNIA CLASS;
- (c) The claims of the representative PLAINTIFF are typical of the claims of each member of the CALIFORNIA CLASS. PLAINTIFF, like all other members of the CALIFORNIA CLASS, was initially classified as exempt upon hiring based on the defined corporate policies and practices and labored under DEFENDANT's systematic procedure that failed to properly classify the PLAINTIFF and the members of the CALIFORNIA CLASS. The PLAINTIFF sustained economic injury as a result of

1 DEFENDANT's employment practices. The PLAINTIFF and the
2 members of the CALIFORNIA CLASS were and are similarly or
3 identically harmed by the same unlawful, deceptive, unfair and pervasive
4 pattern of misconduct engaged in by the DEFENDANT that classified all
5 Transportation Employees as exempt from overtime wages based on the
6 defined corporate policies and practices, and failed to pay overtime to
7 these employees who were improperly classified as exempt;

8 (d) The representative PLAINTIFF will fairly and adequately represent and
9 protect the interest of the CALIFORNIA CLASS, and has retained
10 counsel who are competent and experienced in class action litigation.
11 There are no material conflicts between the claims of the representative
12 PLAINTIFF and the members of the CALIFORNIA CLASS that would
13 make class certification inappropriate. Counsel for the CALIFORNIA
14 CLASS will vigorously assert the claims of all Class Members.

15 26. In addition to meeting the statutory prerequisites to a Class Action, this action is
16 properly maintained as a Class Action pursuant to Fed. R. Civ. Proc. 23(b)(2) and/or (3), in that:

17 (a) Without class certification and determination of declaratory, statutory and
18 other legal questions within the class format, prosecution of separate
19 actions by individual members of the CALIFORNIA CLASS will create
20 the risk of:

21 (i) Inconsistent or varying adjudications with respect to individual
22 members of the CALIFORNIA CLASS which would establish
23 incompatible standards of conduct for the parties opposing the
24 CALIFORNIA CLASS; and/or,

25 (ii) Adjudication with respect to individual members of the
26 CALIFORNIA CLASS which would as a practical matter be
27 dispositive of interests of the other members not party to the
28 adjudication or substantially impair or impede their ability to

1 protect their interests.

2 (b) The parties opposing the CALIFORNIA CLASS have acted or refused to
3 act on grounds generally applicable to the CALIFORNIA CLASS, making
4 appropriate class-wide relief with respect to the CALIFORNIA CLASS
5 as a whole in that the DEFENDANT uniformly classified and treated the
6 Transportation Employees as exempt and, thereafter, uniformly failed to
7 take proper steps to determine whether the Transportation Employees
8 were properly classified as exempt, and thereby denied these employees
9 overtime wages as required by law;

10 (i) With respect to the First Cause of Action, the final relief on behalf
11 of the CALIFORNIA CLASS sought does not relate exclusively to
12 restitution because through this claim, the PLAINTIFF seeks
13 declaratory relief holding that the DEFENDANT'S policy and
14 practices constitute unfair competition, along with incidental
15 equitable relief as may be necessary to remedy the conduct
16 declared to constitute unfair competition;

17 (c) Common questions of law and fact exist as to the members of the
18 CALIFORNIA CLASS, with respect to the practices and violations of
19 California Law as listed above, and predominate over any question
20 affecting only individual members, and a Class Action is superior to other
21 available methods for the fair and efficient adjudication of the
22 controversy, including consideration of:

23 (i) The interests of the members of the CALIFORNIA CLASS in
24 individually controlling the prosecution or defense of separate
25 actions in that the substantial expense of individual actions will be
26 avoided to recover the relatively small amount of economic losses
27 sustained by the individual CALIFORNIA CLASS members when
28 compared to the substantial expense and burden of individual

prosecution of this litigation;

(ii) Class certification will obviate the need for unduly duplicative litigation that would create the risk of: (A) Inconsistent or varying adjudications with respect to individual members of the CALIFORNIA CLASS, which would establish incompatible standards of conduct for the DEFENDANT; and/or, (B) Adjudications with respect to individual members of the CALIFORNIA CLASS would as a practical matter be dispositive of the interests of the other members not parties to the adjudication or substantially impair or impede their ability to protect their interests;

(iii) In the context of wage litigation because as a practical matter a substantial number of individual class members will avoid asserting their legal rights out of fear of retaliation by DEFENDANT, which may adversely affect an individual's job with DEFENDANT or with a subsequent employer, the Class Action is the only means to assert their claims through a representative; and,

(iv) A class action is superior to other available methods for the fair and efficient adjudication of this litigation because class treatment will obviate the need for unduly and unnecessary duplicative litigation that is likely to result in the absence of certification of this action pursuant to Fed. R. Civ. Proc. 23(b)(3).

27. This Court should permit this action to be maintained as a Class Action pursuant to Fed. R. Civ. Proc. 23(b)(2) and/or (3), because:

(a) The questions of law and fact common to the CALIFORNIA CLASS predominate over any question affecting only individual members because the DEFENDANT's employment practices were uniform and

1 systematically applied with respect to the CALIFORNIA CLASS;

2 (b) A Class Action is superior to any other available method for the fair and
3 efficient adjudication of the claims of the members of the CALIFORNIA
4 CLASS because in the context of employment litigation a substantial
5 number of individual Class members will avoid asserting their rights
6 individually out of fear of retaliation or adverse impact on their
7 employment;

8 (c) The members of the CALIFORNIA CLASS exceed 100 people and are
9 therefore so numerous that it is impractical to bring all members of the
10 CALIFORNIA CLASS before the Court;

11 (d) The PLAINTIFF, and the other CALIFORNIA CLASS members, will not
12 be able to obtain effective and economic legal redress unless the action is
13 maintained as a Class Action;

14 (e) There is a community of interest in obtaining appropriate legal and
15 equitable relief for the acts of unfair competition, statutory violations and
16 other improprieties, and in obtaining adequate compensation for the
17 injuries which DEFENDANT's actions have inflicted upon the
18 CALIFORNIA CLASS;

19 (f) There is a community of interest in ensuring that the combined assets of
20 DEFENDANT are sufficient to adequately compensate the members of
21 the CALIFORNIA CLASS for the injuries sustained;

22 (g) DEFENDANT had acted or refused to act on grounds generally applicable
23 to the CALIFORNIA CLASS, thereby making final class-wide relief
24 appropriate with respect to the CALIFORNIA CLASS as a whole;

25 (h) The members of the CALIFORNIA CLASS are readily ascertainable from
26 the business records of DEFENDANT. The CALIFORNIA CLASS
27 consists of all Transportation Employees employed in California during
28 the CALIFORNIA CLASS PERIOD; and,

- 1 (i) Class treatment provides manageable judicial treatment calculated to bring
2 a efficient and rapid conclusion to all litigation of all wage and hour
3 related claims arising out of the conduct of DEFENDANT as to the
4 members of the CALIFORNIA CLASS.

5 28. DEFENDANT maintains records from which the Court can ascertain and identify
6 by job title each of DEFENDANT's employees who have been systematically, intentionally and
7 uniformly subjected to DEFENDANT's corporate policy, practices and procedures as herein
8 alleged. The PLAINTIFF will seek leave to amend the complaint to include any additional job
9 titles of similarly situated employees when they have been identified.

10 **THE CALIFORNIA LABOR SUBCLASS**

11 29. The PLAINTIFF further brings the Second and Third causes of action on behalf
12 of a subclass which consists of all members of the CALIFORNIA CLASS who were employed
13 by DEFENDANT during the period beginning on the date three (3) years prior to the filing of
14 the action and ending on the date as determined by the Court ("CALIFORNIA LABOR
15 SUBCLASS PERIOD"), who performed work in excess of eight (8) hours in one day and/or
16 forty (40) hours in one week and/or hours on the seventh (7th) consecutive day of a workweek
17 (the "CALIFORNIA LABOR SUBCLASS") pursuant to Fed. R. Civ. Proc. 23(b)(3).

18 30. DEFENDANT, as a matter of corporate policy, practice and procedure, and in
19 violation of the applicable California Labor Code ("Labor Code"), and Industrial Welfare
20 Commission ("IWC") Wage Order Requirements intentionally, knowingly, wilfully, and
21 systematically misclassified the PLAINTIFF and the other members of the CALIFORNIA
22 CLASS and the CALIFORNIA LABOR SUBCLASS as exempt from overtime wages and other
23 labor laws based on DEFENDANT's comprehensive policies and procedures in order to avoid
24 the payment of overtime wages by misclassifying their positions as exempt from overtime
25 wages and other labor laws. To the extent equitable tolling operates to toll claims by the
26 CALIFORNIA LABOR SUBCLASS against DEFENDANT, the class period should be
27 adjusted accordingly.

28 31. DEFENDANT has intentionally and deliberately created a number of job levels

1 and job titles in order to create the superficial appearance of a number of unique jobs, when in
2 fact, all the Transportation Employees' jobs are substantially similar and can be easily grouped
3 together for the purpose of determining that they were all misclassified. One of
4 DEFENDANT's purposes in creating and maintaining this multi-level job classification scheme
5 is to create a roadblock to discovery and class certification for all employees similarly
6 misclassified as exempt. DEFENDANT has uniformly misclassified these CALIFORNIA
7 LABOR SUBCLASS members as exempt and denied them overtime wages and other benefits
8 to which non-exempt employees are entitled in order to unfairly cheat the competition and
9 unlawfully profit.

10 32. DEFENDANT maintains records from which the Court can ascertain and identify
11 by job title each of DEFENDANT's employees who as CALIFORNIA LABOR SUBCLASS
12 members have been systematically, intentionally and uniformly misclassified as exempt as a
13 matter of DEFENDANT's corporate policy, practices and procedures. The PLAINTIFF will
14 seek leave to amend the complaint to include these additional job titles when they have been
15 identified.

16 33. The CALIFORNIA LABOR SUBCLASS is so numerous that joinder of all
17 members, which number over 100 Transportation Employees, is impracticable.

18 34. Common questions of law and fact exist as to members of the CALIFORNIA
19 LABOR SUBCLASS, including, but not limited, to the following:

- 20 (a) Whether DEFENDANT unlawfully failed to pay overtime compensation
21 to members of the CALIFORNIA LABOR SUBCLASS in violation of the
22 California Labor Code and applicable regulations and California Wage
23 Order 4-2001;
- 24 (b) Whether the members of the CALIFORNIA LABOR SUBCLASS are
25 non-exempt employees entitled to overtime compensation for overtime
26 hours worked under the overtime pay requirements of California Law;
- 27 (c) Whether DEFENDANT's policy and practice of classifying the
28 CALIFORNIA LABOR SUBCLASS members as exempt from overtime

1 compensation and failing to pay the CALIFORNIA LABOR SUBCLASS
2 members overtime violates applicable provisions of California law;

3 (d) Whether DEFENDANT unlawfully failed to keep and furnish California
4 members with accurate records of hours worked;

5 (e) Whether DEFENDANT's policy and practice of failing to pay members
6 of the CALIFORNIA LABOR SUBCLASS all wages when due within the
7 time required by law after their employment ended violates California
8 law; and,

9 (g) The proper measure of damages and penalties owed to the members of the
10 CALIFORNIA LABOR SUBCLASS.

11 35. DEFENDANT, as a matter of corporate policy, practice and procedure,
12 erroneously classified all Transportation Employees as exempt from overtime wages and other
13 labor laws. All Transportation Employees, including the PLAINTIFF, performed the same
14 primary functions and were paid by DEFENDANT according to uniform and systematic
15 company procedures, which, as alleged herein above, failed to correctly pay overtime
16 compensation. This business practice was uniformly applied to each and every member of the
17 CALIFORNIA LABOR SUBCLASS, and therefore, the propriety of this conduct can be
18 adjudicated on a class-wide basis.

19 36. DEFENDANT systematically violated the rights of the CALIFORNIA LABOR
20 SUBCLASS under California law by:

21 (a) Misclassifying and thereby failing to pay the PLAINTIFF and the
22 members of the CALIFORNIA LABOR SUBCLASS the correct overtime
23 pay for a work day longer than eight (8) hours and/or a workweek longer
24 than forty (40) hours, and also for all hours worked on the seventh (7th)
25 day of a workweek for which DEFENDANT is liable pursuant to Cal.
26 Lab. Code § 1194;

27 (b) Violating Cal. Lab. Code §§ 201, 202 and/or 203, which provides that
28 when an employee is discharged or quits from employment, the employer

1 must pay the employee all wages due without abatement, by failing to
2 tender full payment of wages owed or in the manner required by
3 California law to the members of the CALIFORNIA LABOR
4 SUBCLASS who have terminated their employment; and,

- 5 (c) Violating Cal. Lab. Code § 226 by failing to provide the PLAINTIFF and
6 the members of the CALIFORNIA LABOR SUBCLASS who were
7 improperly classified as exempt with an accurate itemized statement in
8 writing showing the gross wages earned, the net wages earned, all
9 applicable hourly rates in effect during the pay period and the
10 corresponding number of hours worked at each hourly rate by the
11 employee.

12 37. This Class Action meets the statutory prerequisites for the maintenance of a
13 Class Action as set forth in Fed. R. Civ. Proc. 23(b)(3), in that:

- 14 (a) The persons who comprise the CALIFORNIA LABOR SUBCLASS
15 exceed 100 individuals and are therefore so numerous that the joinder of
16 all such persons is impracticable and the disposition of their claims as a
17 class will benefit the parties and the Court;
- 18 (b) Nearly all factual, legal, statutory, and declaratory relief issues that are
19 raised in this Complaint are common to the CALIFORNIA LABOR
20 SUBCLASS and will apply uniformly to every member of the
21 CALIFORNIA LABOR SUBCLASS;
- 22 (c) The claims of the representative PLAINTIFF are typical of the claims of
23 each member of the CALIFORNIA LABOR SUBCLASS. The
24 PLAINTIFF, like all other members of the CALIFORNIA LABOR
25 SUBCLASS, was improperly classified as exempt and denied overtime
26 pay as a result of DEFENDANT'S systematic classification practices.
27 The PLAINTIFF and all other members of the CALIFORNIA LABOR
28 SUBCLASS sustained similar economic injuries arising from

1 DEFENDANT'S violations of the laws of California; and,

- 2 (d) The representative PLAINTIFF will fairly and adequately represent and
3 protect the interest of the CALIFORNIA LABOR SUBCLASS, and has
4 retained counsel who are competent and experienced in Class Action
5 litigation. There are no material conflicts between the claims of the
6 representative PLAINTIFF and the members of the CALIFORNIA
7 LABOR SUBCLASS that would make class certification inappropriate.
8 Counsel for the CALIFORNIA LABOR SUBCLASS will vigorously
9 assert the claims of all Class Members.

10 38. In addition to meeting the statutory prerequisites to a Class Action, this action is
11 properly maintained as a Class Action pursuant to Fed. R. Civ. Proc. 23(b)(3), in that:

- 12 (a) Without class certification and determination of declaratory, statutory and
13 other legal questions within the class format, prosecution of separate
14 actions by individual members of the CALIFORNIA LABOR
15 SUBCLASS will create the risk of:

16 (i) Inconsistent or varying adjudications with respect to individual
17 members of the CALIFORNIA LABOR SUBCLASS which would
18 establish incompatible standards of conduct for the parties
19 opposing the CALIFORNIA LABOR SUBCLASS; or,

20 (ii) Adjudication with respect to individual members of the
21 CALIFORNIA LABOR SUBCLASS which would as a practical
22 matter be dispositive of interests of the other members not party to
23 the adjudication or substantially impair or impede their ability to
24 protect their interests.

- 25 (b) The parties opposing the CALIFORNIA LABOR SUBCLASS have acted
26 or refused to act on grounds generally applicable to the CALIFORNIA
27 SUBCLASS, making appropriate class-wide relief with respect to the
28 SUBCLASS as a whole in that the DEFENDANT uniformly classified

1 and treated the Transportation Employees as exempt and, thereafter,
2 uniformly failed to take proper steps to determine whether the
3 Transportation Employees were properly classified as exempt, and
4 thereby denied these employees overtime wages as required by law;

5 (c) Common questions of law and fact predominate as to the members of the
6 CALIFORNIA LABOR SUBCLASS, with respect to the practices and
7 violations of California Law as listed above, and predominate over any
8 question affecting only individual members, and a Class Action is superior
9 to other available methods for the fair and efficient adjudication of the
10 controversy, including consideration of:

11 (i) The interests of the members of the CALIFORNIA LABOR
12 SUBCLASS in individually controlling the prosecution or defense
13 of separate actions in that the substantial expense of individual
14 actions will be avoided to recover the relatively small amount of
15 economic losses sustained by the individual CALIFORNIA
16 LABOR SUBCLASS members when compared to the substantial
17 expense and burden of individual prosecution of this litigation;

18 (ii) Class certification will obviate the need for unduly duplicative
19 litigation that would create the risk of: (A) Inconsistent or varying
20 adjudications with respect to individual members of the
21 CALIFORNIA LABOR SUBCLASS, which would establish
22 incompatible standards of conduct for the DEFENDANT; and/or,
23 (B) Adjudications with respect to individual members of the
24 CALIFORNIA LABOR SUBCLASS would as a practical matter
25 be dispositive of the interests of the other members not parties to
26 the adjudication or substantially impair or impede their ability to
27 protect their interests;

28 (iii) In the context of wage litigation because a substantial number of

individual class members will avoid asserting their legal rights out of fear of retaliation by DEFENDANT, which may adversely affect an individual's job with DEFENDANT or with a subsequent employer, the Class Action is the only means to assert their claims through a representative; and,

(iv) A class action is superior to other available methods for the fair and efficient adjudication of this litigation because class treatment will obviate the need for unduly and unnecessary duplicative litigation that is likely to result in the absence of certification of this action pursuant to Fed. R. Civ. Proc. 23(b)(3).

39. This Court should permit this action to be maintained as a Class Action pursuant to Fed. R. Civ. Proc. 23(b)(3), because:

- (a) The questions of law and fact common to the CALIFORNIA LABOR SUBCLASS predominate over any question affecting only individual members;
- (b) A Class Action is superior to any other available method for the fair and efficient adjudication of the claims of the members of the CALIFORNIA LABOR SUBCLASS because in the context of employment litigation a substantial number of individual Class members will avoid asserting their rights individually out of fear of retaliation or adverse impact on their employment;
- (c) The members of the CALIFORNIA LABOR SUBCLASS exceed 100 individuals and are therefore so numerous that it is impractical to bring all members of the CALIFORNIA LABOR SUBCLASS before the Court;
- (d) The PLAINTIFF, and the other CALIFORNIA LABOR SUBCLASS members, will not be able to obtain effective and economic legal redress unless the action is maintained as a Class Action;
- (e) There is a community of interest in obtaining appropriate legal and

1 equitable relief for the acts of unfair competition, statutory violations and
2 other improprieties, and in obtaining adequate compensation for the
3 damages and injuries which DEFENDANT'S actions have inflicted upon
4 the CALIFORNIA LABOR SUBCLASS;

5 (f) There is a community of interest in ensuring that the combined assets of
6 DEFENDANT are sufficient to adequately compensate the members of
7 the CALIFORNIA LABOR SUBCLASS for the injuries sustained;

8 (g) DEFENDANT has acted or refused to act on grounds generally applicable
9 to the CALIFORNIA LABOR SUBCLASS, thereby making final class-
10 wide relief appropriate with respect to the CALIFORNIA LABOR
11 SUBCLASS as a whole;

12 (h) The members of the CALIFORNIA LABOR SUBCLASS are readily
13 ascertainable from the business records of DEFENDANT. The
14 CALIFORNIA LABOR SUBCLASS consists of those Transportation
15 Employees who worked overtime hours; and,

16 (i) Class treatment provides manageable judicial treatment calculated to bring
17 a efficient and rapid conclusion to all litigation of all wage and hour
18 related claims arising out of the conduct of DEFENDANT.

19 **JURISDICTION & VENUE**

20 40. This Court has jurisdiction over the PLAINTIFF's federal claim pursuant to 28
21 U.S.C. § 1331 and supplemental jurisdiction of the PLAINTIFF's state law claims pursuant to
22 28 U.S.C. § 1367.

23 41. Further, with respect to the state law class claims, these state law class claims are
24 brought as a class action pursuant to Fed. R. Civ. Proc, Rule 23 on behalf of a class that exceeds
25 100 people, that involves more than \$5,000,000 in controversy, and where the citizenship of at
26 least one member of the class is diverse from that of DEFENDANT. As a result, this Court also
27 has original jurisdiction over the state law class claims under 28 U.S.C. § 1332 (CAFA
28 Jurisdiction).

42. Venue is proper in this district pursuant to 28 U.S.C. § 1391 because: (I) DEFENDANT is subject to personal jurisdiction in this District and therefore resides in this District; (ii) DEFENDANT maintains offices or facilities in San Diego County, California; (iii) DEFENDANT committed the wrongful conduct against the PLAINTIFF and other members of the CALIFORNIA CLASS in San Diego County, California; (iv) the PLAINTIFF resides in San Diego County; and (v) the PLAINTIFF was employed by DEFENDANT in San Diego County, California.

FIRST CAUSE OF ACTION

For Unlawful Business Practices

[Cal. Bus. And Prof. Code § 17200 et seq.]

(By PLAINTIFF and the CALIFORNIA CLASS and against DEFENDANT)

43. The PLAINTIFF, and the other members of the CALIFORNIA CLASS, reallege and incorporate by this reference, as though fully set forth herein, paragraphs 1 through 42 of this Complaint.

44. DEFENDANT is a “person” as that term is defined under the California Business & Professions Code, Section 17021.

45. California Business & Professions Code § 17200 et seq. (the “UCL”) defines unfair competition as any unlawful, unfair, or fraudulent business act or practice. Section 17203 authorizes injunctive, declaratory, and/or other equitable relief with respect to unfair competition as follows:

Any person who engages, has engaged, or proposes to engage in unfair competition may be enjoined in any court of competent jurisdiction. The court may make such orders or judgments, including the appointment of a receiver, as may be necessary to prevent the use or employment by any person of any practice which constitutes unfair competition, as defined in this chapter, or as may be necessary to restore to any person in interest any money or property, real or personal, which may have been acquired by means of such unfair competition.

California Business & Professions Code § 17203.

46. By the conduct alleged herein, DEFENDANT has engaged and continues to engage in a business practice which violates California law, including but not limited to provisions of the Wage Orders, the California Labor Code, the California Code of Regulations,

1 the Fair Labor Standards Act, the regulations of the Department of Labor, and the opinions of
2 the Department of Labor Standards Enforcement, for which this Court should issue declaratory,
3 and other equitable relief, pursuant to Cal. Bus. & Prof. Code § 17203, as may be necessary to
4 prevent and remedy the conduct held to constitute unfair competition.

5 47. By and through the unfair and unlawful business practices described herein
6 above, DEFENDANT has obtained valuable property, money, and services from the
7 PLAINTIFF, and the other members of the CALIFORNIA CLASS, and has deprived them of
8 valuable rights and benefits guaranteed by law, all to their detriment and to the benefit of
9 DEFENDANT so as to allow DEFENDANT to unfairly compete. Declaratory, injunctive and
10 equitable relief is necessary to prevent and remedy this unfair competition.

11 48. All the acts described herein as violations of, among other things, the California
12 Labor Code, California Code of Regulations, and the Industrial Welfare Commission Wage
13 Orders, are unlawful, are in violation of public policy, are immoral, unethical, oppressive, and
14 unscrupulous, and are likely to deceive employees, and thereby constitute deceptive, unfair and
15 unlawful business practices in violation of Cal. Bus. and Prof. Code § 17200 et seq.

16 49. The PLAINTIFF, and the other members of the CALIFORNIA CLASS, are
17 further entitled to, and do, seek a declaration that the above described business practices are
18 deceptive unfair and/or unlawful. The practices herein alleged presently continue to occur
19 unabated. As a result of the unfair and unlawful business practices described above, the
20 PLAINTIFF, and the other members of the CALIFORNIA CLASS, have suffered legal and
21 economic harm.

22 50. The PLAINTIFF, and the other members of the CALIFORNIA CLASS, have no
23 plain, speedy, and/or adequate remedy at law that will end the unfair and unlawful business
24 practices of DEFENDANT. As a result of the unfair and unlawful business practices described
25 above, the PLAINTIFF, and the other members of the CALIFORNIA CLASS, have suffered
26 and will continue to suffer irreparable harm unless DEFENDANT is restrained from continuing
27 to engage in these unfair and unlawful business practices. In addition, DEFENDANT should
28 be required to disgorge the unpaid moneys and interest thereon as required by law in order to

1 provide restitution to the PLAINTIFF, and to the other members of the CALIFORNIA CLASS.

2
3 **SECOND CAUSE OF ACTION**

4 **For Failure To Pay Overtime Compensation**

5 **[Cal. Lab. Code §§ 510, 515.5, 551, 552, 1194 and 1198]**

6 **(By PLAINTIFF and the CALIFORNIA LABOR SUBCLASS against DEFENDANT)**

7 51. PLAINTIFF, and the other members of the CALIFORNIA LABOR SUBCLASS,
8 reallege and incorporate by this reference, as though fully set forth herein, paragraphs 1 through
9 50 of this Complaint.

10 52. Cal. Lab. Code § 510 states in relevant part:

11 Eight hours of labor constitutes a day's work. Any work in excess of eight hours
12 in one workday and any work in excess of 40 hours in any one workweek and the
13 first eight hours worked on the seventh day of work in any one workweek shall
14 be compensated at the rate of no less than one and one-half times the regular rate
15 of pay for an employee. Any work in excess of 12 hours in one day shall be
16 compensated at the rate of no less than twice the regular rate of pay for an
17 employee. In addition, any work in excess of eight hours on any seventh day of
18 a workweek shall be compensated at the rate of no less than twice the regular rate
19 of pay of an employee.

20 53. Cal. Lab. Code § 551 states that, "Every person employed in any occupation
21 of labor is entitled to one day's rest therefrom in seven."

22 54. Cal. Lab. Code § 552 states that, "No employer of labor shall cause his
23 employees to work more than six days in seven."

24 55. Cal. Lab. Code § 515(d) provides: "For the purpose of computing the overtime
25 rate of compensation required to be paid to a nonexempt full-time salaried employee, the
26 employee's regular hourly rate shall be 1/40th of the employee's weekly salary.

27 56. Cal. Lab. Code § 1194 states:

28 Notwithstanding any agreement to work for a lesser wage, any employee
receiving less than the legal minimum wage or the legal overtime compensation
applicable to the employee is entitled to recover in a civil action the unpaid
balance of the full amount of this minimum wage or overtime compensation,
including interest thereon, reasonable attorney's fees, and costs of suit.

57. Cal. Lab. Code § 1198 provides: "The maximum hours of work and the standard
conditions of labor fixed by the commission shall be the maximum hours of work and the

1 standard conditions of labor for employees. The employment of any employee for longer hours
2 than those fixed by the order or under conditions of labor prohibited by the order is unlawful.”

3 58. In addition, Labor Code Section 558 provides:

4 (a) Any employer or other person acting on behalf of an employer
5 who violates, or causes to be violated, a section of this chapter or any provision
6 regulating hours and days of work in any order of the Industrial Welfare
7 Commission shall be subject to a civil penalty as follows:

8 (1) For any initial violation, fifty dollars (\$50) for each underpaid
9 employee for each pay period for which the employee was underpaid in
10 addition to an amount sufficient to recover underpaid wages.

11 (2) For each subsequent violation, one hundred dollars (\$100) for each
12 underpaid employee for each pay period for which the employee was
13 underpaid in addition to an amount sufficient to recover underpaid wages.

14 (3) Wages recovered pursuant to this section shall be paid to the affected
15 employee.

16 (b) If upon inspection or investigation the Labor Commissioner determines that
17 a person had paid or caused to be paid a wage for overtime work in violation of
18 any provision of this chapter, or any provision regulating hours and days of work
19 in any order of the Industrial Welfare Commission, the Labor Commissioner may
20 issue a citation. The procedures for issuing, contesting, and enforcing judgments
21 for citations or civil penalties issued by the Labor Commissioner for a violation
22 of this chapter shall be the same as those set out in Section 1197.1.

23 (c) The civil penalties provided for in this section are in addition to any other
24 civil or criminal penalty provided by law.

25 59. DEFENDANT has intentionally and uniformly designated Transportation
26 Employees as “exempt” based their job title alone and without regard to DEFENDANT’s
27 realistic expectations and actual overall requirements of the job, including the PLAINTIFF and
28 the other members of the CALIFORNIA LABOR SUBCLASS who worked on the production
side of the DEFENDANT’s business. This was done in an illegal attempt to avoid payment of
overtime wages and other benefits in violation of the Cal. Lab. Code and Industrial Welfare
Commission requirements.

60. For an employee to be exempt as a bona fide “executive,” all the following
criteria must be met and DEFENDANT has the burden of proving that:

(a) The employee’s primary duty must be management of the enterprise, or
of a customarily recognized department or subdivision; and,

(b) The employee must customarily and regularly direct the work of at least
two (2) or more other employees; and,

(c) The employee must have the authority to hire and fire, or to command

1 particularly serious attention to his or his recommendations on such
2 actions affecting other employees; and,

3 (d) The employee must customarily and regularly exercise discretion and
4 independent judgment; and,

5 (e) The employee must be primarily engaged in duties which meet the test of
6 exemption.

7 No member of the CALIFORNIA LABOR SUBCLASS was or is an exempt executive because
8 they all fail to meet the requirements of being an “executive” within the meaning of Order No.
9 4-2001.

10 61. For an employee to be exempt as a bona fide “administrator,” all of the following
11 criteria must be met and DEFENDANT has the burden of proving that:

12 (a) The employee must perform office or non-manual work directly related
13 to management policies or general business operation of the employer;
14 and,

15 (b) The employee must customarily and regularly exercise discretion and
16 independent judgment; and,

17 (c) The employee must regularly and directly assist a proprietor or an exempt
18 administrator; or,

19 (d) The employee must perform, under only general supervision, work
20 requiring special training, experience, or knowledge, or,

21 (e) The employee must execute special assignments and tasks under only
22 general supervision; and,

23 (f) The employee must be primarily engaged in duties which meet the test of
24 exemption.

25 No member of the CALIFORNIA LABOR SUBCLASS was or is an exempt administrator
26 because they all fail to meet the requirements for being an “administrator” under Order No. 4-
27 2001.

28 62. The Industrial Welfare Commission, ICW Wage Order 4-2001, at Section

1 (1)(A)(3)(h),
2 and California Labor Code, Section 515, also set forth the requirements which must be
3 complied with to place an employee in the “professional” exempt category. For an employee
4 to be “exempt” as a bona fide “professional,” all the following criteria must be met and
5 DEFENDANT has the burden of proving that:

6 (a) The employee is primarily engaged in an occupation commonly
7 recognized as a learned or artistic profession. For the purposes of this
8 subsection, "learned or artistic profession" means an employee who is
9 primarily engaged in the performance of:

10 (i) Work requiring knowledge of an advanced type in a field or
11 science or learning customarily acquired by a prolonged course of
12 specialized intellectual instruction and study, as distinguished from
13 a general academic education and from an apprenticeship, and
14 from training in the performance of routine mental, manual, or
15 physical processes, or work that is an essential part or necessarily
16 incident to any of the above work; or,

17 (ii) Work that is original and creative in character in a recognized field
18 of artistic endeavor, and the result of which depends primarily on
19 the invention, imagination or talent of the employee or work that
20 is an essential part of or incident to any of the above work; and,

21 (iii) Whose work is predominately intellectual and varied in character
22 (as opposed to routine mental, manual, mechanical, or physical
23 work) and is of such character cannot be standardized in relation
24 to a given period of time.

25 (b) The employee must customarily and regularly exercise discretion and
26 independent judgment; and,

27 (c) The employee earns a monthly salary equivalent to no less than two (2)
28 times the state minimum wage for full-time employment.

1 No member of the CALIFORNIA LABOR SUBCLASS was or is an exempt professional
2 because they all fail to meet the requirements of being a “professional” within the meaning of
3 Order No. 4-2001.

4 63. The PLAINTIFF, and other members of the CALIFORNIA LABOR
5 SUBCLASS, do not fit the definition of an exempt executive, administrative, or professional
6 employee because:

7 (a) They did not exercise independent discretion and judgment as to matters of
8 significance;

9 (b) They did not work as executives or administrators; and,

10 (c) The professional exemption articulated in Wage Order 4-2001, section
11 (1)(A)(3)(h) and Labor Code § 515, does not apply to the PLAINTIFF, nor to the
12 other members of the CALIFORNIA LABOR SUBCLASS, because they did not
13 meet all the applicable requirements to work under the professional exemption
14 of for the reasons set forth above in this Complaint.

15 64. During the CALIFORNIA LABOR SUBCLASS PERIOD, the PLAINTIFF, and
16 other
17 members of the CALIFORNIA LABOR SUBCLASS, regularly worked more than eight (8)
18 hours in a workday and/or forty (40) hours in a work week, and also worked on the seventh
19 (7th) day of a workweek.

20 65. At all relevant times, DEFENDANT failed to pay the PLAINTIFF, and other
21 members of the CALIFORNIA LABOR SUBCLASS, overtime compensation for the hours
22 they have worked in excess of the maximum hours permissible by law as required by Cal. Lab.
23 Code §§ 510 and 1198, even though the PLAINTIFF, and the other members of the
24 CALIFORNIA LABOR SUBCLASS, were regularly required to work, and did in fact work,
25 overtime hours.

26 66. By virtue of DEFENDANT’s unlawful failure to pay additional compensation to
27 the PLAINTIFF, and the other members of the CALIFORNIA LABOR SUBCLASS, for their
28 overtime hours, the PLAINTIFF, and the other members of the CALIFORNIA LABOR

1 SUBCLASS, have suffered, and will continue to suffer, an economic injury in amounts which
2 are presently unknown to them and which will be ascertained according to proof at trial.

3 67. DEFENDANT knew or should have known that the PLAINTIFF, and the other
4 members of the CALIFORNIA LABOR SUBCLASS, were misclassified as exempt and
5 DEFENDANT systematically elected, either through intentional malfeasance or gross
6 nonfeasance, not to pay them for their overtime labor as a matter of uniform corporate policy,
7 practice and procedure.

8 68. Therefore, the PLAINTIFF, and the other members of the CALIFORNIA
9 LABOR SUBCLASS, request recovery of overtime compensation according to proof, interest,
10 statutory costs, as well as the assessment of any statutory penalties against DEFENDANT, in
11 a sum as provided by the Cal. Lab. Code and/or other statutes. To the extent overtime
12 compensation is determined to be owed to the PLAINTIFF and other members of the
13 CALIFORNIA LABOR SUBCLASS whose employment has been terminated, these employees
14 would also be entitled to waiting time penalties under Labor Code § 203. Further, the
15 PLAINTIFF, and the other members of the CALIFORNIA LABOR SUBCLASS, are entitled
16 to seek and recover statutory costs.

17 69. In performing the acts and practices herein alleged in violation of labor laws and
18 refusing to provide the requisite overtime compensation, the DEFENDANT acted and continue
19 to act intentionally, oppressively, and maliciously toward the PLAINTIFF, and toward the other
20 members of the CALIFORNIA LABOR SUBCLASS, with a conscious and utter disregard of
21 their legal rights, or the consequences to them, and with the despicable intent of depriving them
22 of their property and legal rights and otherwise causing them injury in order to increase
23 corporate profits at the expense of the PLAINTIFF and the members of the CALIFORNIA
24 CLASS.

25
26 **THIRD CAUSE OF ACTION**

27 **For Failure to Provide Accurate Itemized Statements**

28 **[Cal. Lab. Code § 226]**

(By PLAINTIFF and the CALIFORNIA LABOR SUBCLASS)

70. PLAINTIFF, and the other members of the CALIFORNIA LABOR SUBCLASS, reallege and incorporate by this reference, as though fully set forth herein, paragraphs 1 through 69 of this Complaint.

71. Cal. Labor Code § 226 provides that an employer must furnish employees with an “accurate itemized statement in writing” showing:

- (1) gross wages earned,
- (2) total hours worked by the employee, except for any employee whose compensation is solely based on a salary and who is exempt from payment of overtime under subdivision (a) of Section 515 or any applicable order of the Industrial Welfare Commission,
- (3) the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis,
- (4) all deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item,
- (5) net wages earned,
- (6) the inclusive dates of the period for which the employee is paid,
- (7) the name of the employee and his or her social security number, except that by January 1, 2008, only the last four digits of his or her social security number or an employee identification number other than a social security number may be shown on the itemized statement,
- (8) the name and address of the legal entity that is the employer, and
- (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee.

72. At all times relevant herein, DEFENDANT violated Labor Code § 226, in that DEFENDANT failed to provide an accurate wage statement in writing that properly and accurately itemized the number of hours worked by the PLAINTIFF, and the other members of the CALIFORNIA LABOR SUBCLASS at the effective regular rates of pay and the effective overtime rates of pay.

73. DEFENDANT knowingly and intentionally failed to comply with the California Labor Code, Section 226, causing damages to the PLAINTIFF, and the other members of the CALIFORNIA LABOR SUBCLASS. These damages include, but are not limited to, costs expended calculating the true hours worked and the amount of employment taxes which were not properly paid to state and federal tax authorities. These damages are difficult to estimate. Therefore, the PLAINTIFF, and the other members of the CALIFORNIA LABOR SUBCLASS may elect to recover liquidated damages of \$50.00 for the initial pay period in which the violation occurred, and \$100.00 for each violation in subsequent pay period pursuant to Labor

Code § 226, in an amount according to proof at the time of trial (but in no event more than \$4,000.00 for the PLAINTIFF and for each respective member of the CALIFORNIA LABOR SUBCLASS herein).

FOURTH CAUSE OF ACTION

Fair Labor Standards Act, 29 U.S.C. §§ 201, et seq. ("FLSA")

(By PLAINTIFF and the COLLECTIVE CLASS against DEFENDANT)

74. PLAINTIFF, and the other members of the COLLECTIVE CLASS, reallege and incorporate by this reference, as though fully set forth herein, paragraphs 1 through 73 of this Complaint.

75. DEFENDANT is engaged in communication, business, and transmission between the states, and is, therefore, engaged in commerce within the meaning of 29 U.S.C. § 203(b).

76. The PLAINTIFF further brings the Fourth cause of action on behalf of a Collective Class which consists of all Transportation Employees employed in the United States by DEFENDANT during the period three (3) years prior to the filing of the complaint and ending on the date as determined by the Court, and who performed work in excess of forty (40) hours in one week (the "COLLECTIVE CLASS").

77. 29 U.S.C. § 255 provides that a three-year statute of limitations applies to willful violations of the FLSA.

78. 29 U.S.C. § 207(a)(1) provides in pertinent part:

Except as otherwise provided in this section, no employer shall employ any of his employees who in any workweek is engaged in commerce or in the production of goods for commerce, or is employed in an enterprise engaged in commerce or in the production of goods for commerce, for a workweek longer than forty hours unless such employee receives compensation for his employment in excess of the hours above specified at a rate not less than one and one-half times the regular rate at which he is employed.

79. Section 213(a)(1) of the FLSA provides that the overtime pay requirement does not apply to:

any employee employed in a bona fide executive, administrative, or professional capacity (including any employee employed in the capacity of academic administrative personnel or teacher in elementary or secondary schools), or in the capacity of outside salesman (as such terms are defined and delimited from time

1 to time by regulations of the Secretary, subject to the provisions of the
2 Administrative Procedure Act [5 USCS §§ 551 et seq.] except [that] an employee
3 of a retail or service establishment shall not be excluded from the definition of
4 employee employed in a bona fide executive or administrative capacity because
5 of the number of hours in his workweek which he devotes to activities not
6 directly or closely related to the performance of executive or administrative
7 activities, if less than 40 per centum of his hours worked in the workweek are
8 devoted to such activities).

9 80. DEFENDANT has willfully engaged in a widespread pattern and practice of
10 violating the provisions of the FLSA, as detailed above, by uniformly designating certain
11 employees as “exempt” employees, by their job title and without regard to DEFENDANT’s
12 realistic expectations and actual overall requirements of the job, including the PLAINTIFF and
13 the other members of the COLLECTIVE CLASS who worked on the production side of the
14 DEFENDANT’s business enterprise. This was done in an illegal attempt to avoid payment of
15 overtime wages and other benefits in violation of the FLSA and Code of Federal Regulations
16 requirements.

17 81. Pursuant to the Fair Labor Standards Act, 29 U.S.C. § 201, et seq., the
18 PLAINTIFF and the other members of the COLLECTIVE CLASS are entitled to overtime
19 compensation for all overtime hours actually worked, at a rate not less than one and one-half
20 times their regular rate of pay for all hours worked in excess of forty (40) hours in any
21 workweek.

22 82. 29 C.F.R. 541.2 establishes that a job title alone is insufficient to establish the
23 exempt status of an employee. The exempt or nonexempt status of any particular employee must
24 be determined on the basis of whether the employee’s salary and duties meet the requirements
25 of the regulations in this part.

26 83. The exemptions of the FLSA as listed in section 13(a), and as explained by 29
27 C.F.R. 541.3, do not apply to the PLAINTIFF and the other members of the COLLECTIVE
28 CLASS, because their work consists of non-management, production line labor performed with
skills and knowledge acquired from on-the-job training, rather than from the prolonged course
of specialized intellectual instruction required for exempt learned professional employees such
as medical doctors, architects and archeologists. Transportation Employees either do not hold
an advanced degree, have not taken any prolonged course of specialization, and/or have attained

1 the vast majority of the skills they use as employees of DEFENDANT from on the job training.

2 84. For an employee to be exempt as a bona fide “executive,” all the following
3 criteria must be met and DEFENDANT has the burden of proving that:

4 (a) The employee’s primary duty must be management of the enterprise, or of a
5 customarily recognized department or subdivision;

6 (b) The employee must customarily and regularly direct the work of at least two (2)
7 or more other employees;

8 (c) The employee must have the authority to hire and fire, or to command
9 particularly serious attention to his or his recommendations on such actions
10 affecting other employees; and,

11 (d) The employee must be primarily engaged in duties which meet the test of
12 exemption.

13 No member of the COLLECTIVE CLASS was or is an executive because they all fail to meet
14 the requirements of being an “executive” under section 13 of the FLSA and 29 C.F.R. 541.100.
15 Moreover, none of the members of the COLLECTIVE CLASS managed the work of two or
16 more other employees in a customarily recognized department or subdivision of the employer,
17 and whose recommendations as to the hiring, firing, advancement, promotion or other change
18 of status of the other employees were given particular weight and therefore, they do not qualify
19 for the executive exemption.

20 85. For an employee to be exempt as a bona fide “administrator,” all of the following
21 criteria must be met and DEFENDANT has the burden of proving that:

22 (a) The employee must perform office or non-manual work directly related to
23 management or general business operation of the employer or the employer’s
24 customers;

25 (b) The employee must customarily and regularly exercise discretion and
26 independent
27 judgment with respect to matters of significance; and,

28 (c) The employee must regularly and directly assist a proprietor or an exempt

1 administrator; or,

2 (d) The employee must perform under only general supervision, work requiring
3 special training, experience, or knowledge; and,

4 (e) The employee must be primarily engaged in duties which meet the test of
5 exemption.

6 No member of the COLLECTIVE CLASS was or is an administrator because they all fail to
7 meet the requirements of for being an “administrator” under section 13(a) of the FLSA and 29
8 C.F.R. 541.300. Moreover, their primary duty does not include work such as planning,
9 scheduling, and coordinating activities required to develop systems to solve complex business
10 or scientific problems of the employer or the employer’s customers and therefore, they are not
11 qualified for the administrative exemption.

12 86. For an employee to be “exempt” as a bona fide “professional”, the
13 DEFENDANT has the burden of proving that the primary duty of the employee is the
14 performance of work that:

15 (a) Requires knowledge of an advanced type in a field of science or learning
16 customarily acquired by a prolonged course of specialized intellectual instruction;

17 or

18 (b) Requires invention, imagination, originality or talent in a recognized field of
19 artistic or creative endeavor.

20 No member of the COLLECTIVE CLASS was or is a professional because they all fail to meet
21 the requirements of being an “professional” within the meaning of 29 CFR 541.300.

22 Further, the PLAINTIFF and other Transportation Employees operated under intense scrutiny
23 from management and are strictly dictated by written guidelines and standardized procedures.

24 87. During the COLLECTIVE CLASS PERIOD, the PLAINTIFF, and other
25 members of the COLLECTIVE CLASS, worked more than forty (40) hours in a work week.

26 88. At all relevant times, DEFENDANT failed to pay the PLAINTIFF, and other
27 members of the COLLECTIVE CLASS, overtime compensation for the hours they have worked
28 in excess of the maximum hours permissible by law as required by section 207 of the FLSA,

1 even though the PLAINTIFF, and the other members of the COLLECTIVE CLASS, were
2 regularly required to work, and did in fact work, overtime hours.

3 89. For purposes of the Fair Labor Standards Act, the employment practices of
4 DEFENDANT were and are uniform throughout the United States in all respects material to the
5 claims asserted in this Complaint.

6 90. There are no other exemptions applicable to the PLAINTIFF and/or to members
7 of the COLLECTIVE CLASS.

8 91. As a result of DEFENDANT'S failure to pay overtime compensation for
9 overtime hours worked, as required by the FLSA, the PLAINTIFF and the members of the
10 COLLECTIVE CLASS were damaged in an amount to be proved at trial.

11 92. Therefore, the PLAINTIFF demands that he and the members of the
12 COLLECTIVE CLASS be paid overtime compensation as required by the FLSA for every hour
13 of overtime worked in any work week for which they were not compensated, plus interest and
14 statutory costs as provided by law.

15
16 **PRAYER**

17 WHEREFOR, the PLAINTIFF prays for judgment against each Defendant, jointly and
18 severally, as follows:

19 **1. On behalf of the CALIFORNIA CLASS:**

- 20 A) That the Court certify the First Cause of Action asserted by the CALIFORNIA
21 CLASS as a class action pursuant to Fed. R. Civ. Proc. 23(b)(2) and/or (3);
22 B) An order requiring DEFENDANT to correctly calculate and pay all wages and
23 all sums unlawfully withheld from compensation due to the PLAINTIFF and to
24 the other members of the CALIFORNIA CLASS;
25 C) Restitutionary disgorgement of DEFENDANT'S ill-gotten gains into a fluid fund
26 for restitution of the sums incidental to DEFENDANT'S violations due to the
27 PLAINTIFF and to the other members of the CALIFORNIA CLASS according
28 to proof; and,

1 D) An order temporarily, preliminarily, and permanently enjoining and restraining
2 DEFENDANT from engaging in similar unlawful conduct as set forth herein.

3 **2. On behalf of the CALIFORNIA LABOR SUBCLASS:**

4 A) That the Court certify the Second and Third Causes of Action asserted by the
5 CALIFORNIA LABOR SUBCLASS as a class action pursuant to Fed. R. Civ.
6 Proc. 23(b)(3);

7 B) Compensatory damages, according to proof at trial, including compensatory
8 damages for overtime compensation due to the PLAINTIFF and to the other
9 members of the CALIFORNIA LABOR SUBCLASS, during the applicable
10 CALIFORNIA CLASS PERIODS plus interest thereon at the statutory rate;

11 C) The wages of all terminated employee in the CALIFORNIA LABOR
12 SUBCLASS as a penalty from the due date thereof at the same rate, in
13 accordance with Cal. Lab. Code § 203; and,

14 D) The greater of all actual damages or fifty dollars (\$50) for the initial pay period
15 in which a violation occurs and one hundred dollars (\$100) per each member of
16 the CALIFORNIA LABOR SUBCLASS for each violation in a subsequent pay
17 period, not exceeding an aggregate penalty of four thousand dollars (\$4,000), and
18 an award of costs for violation of Cal. Lab. Code § 226.

19 **3. On behalf of the COLLECTIVE CLASS:**

20 A) That the Court certify the Fourth Cause of Action asserted by the COLLECTIVE
21 CLASS as an opt-in class action under 29 U.S.C. § 216(b);

22 B) Issue a declaratory finding that Defendant's acts, policies, practices and
23 procedures complained of herein violated provisions of the Fair Labor Standards
24 Act;

25 C) That the PLAINTIFF and the other members of the COLLECTIVE CLASS
26 recover compensatory damages and an equal amount of liquidated damages as
27 provided under the law and in 29 U.S.C. § 216(b).

28 **4. On all claims:**

- Dated: August 17, 2010

AMENDED CLASS AND COLLECTIVE ACTION COMPLAINT
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DEMAND FOR JURY TRIAL

The PLAINTIFF demands jury trial on issues triable to a jury.

Dated: August 17, 2010

BLUMENTHAL, NORDREHAUG & BHOWMIK

By: /s/ Norman B. Blumenthal
Norman B. Blumenthal
Attorneys for Plaintiff